



INTERIOR BOARD OF INDIAN APPEALS

Cheyenne River Sioux Tribe v. Acting Great Plains Regional Director,
Bureau of Indian Affairs

41 IBIA 308 (10/26/2005)

Reconsideration denied:

42 IBIA 74



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

CHEYENNE RIVER SIOUX TRIBE,	:	Order Dismissing Appeal
Appellant,	:	
	:	
v.	:	
	:	Docket No. IBIA 04-12-A
ACTING GREAT PLAINS REGIONAL	:	
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee.	:	October 26, 2005

The Cheyenne River Sioux Tribe (Tribe) seeks review of a September 16, 2003 decision of the Acting Great Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), increasing the rental rate for certain grazing land on the Cheyenne River Reservation (Reservation). For the reasons stated below, the Board dismisses the appeal.

Background

The Board recently described the regulatory regime pertaining to the setting of grazing rental rates in Rosebud Indian Land and Grazing Association v. Great Plains Regional Director, 41 IBIA 298 (2005). In brief, with limited exception, federal regulations require a party wishing to graze on Indian trust land to obtain a permit to do so. 25 C.F.R. § 166.200. Permits may be issued by the Indian landowner, whether a tribe or individual Indians, subject generally to BIA approval. 25 C.F.R. §§ 166.203 & 166.217. Alternatively, permits may be issued by BIA under certain circumstances, including if the Indian landowner grants it written authority to do so. Id. § 166.205(a).

BIA establishes the grazing rental rate for individually owned Indian lands and for tribal land where the tribe has not established the rate. Id. § 166.400(b). Procedures for establishing the grazing rental rate are set forth in 25 C.F.R. § 166.401; procedures for adjusting the rate, annually or on a periodic basis as specified in the grazing permit, are set forth in 25 C.F.R. § 166.408.

The Tribe regulates grazing permits on Indian lands within the Reservation pursuant to Grazing Ordinance #71. Section I.20 of the ordinance provides that grazing rental rates are set by the Tribe for tribal land and by BIA for allotted land. According to the Tribe's opening brief, the grazing rental rate set by the Tribe for tribal lands during the 2004 grazing season was \$5.00 per animal unit month (AUM). ^{1/}

On September 16, 2003, the Regional Director issued a Memorandum to the Superintendent of the Cheyenne River Agency establishing a new grazing rental rate for allotted lands on the Reservation for the 2004 grazing season. ^{2/} The new rate was set at \$13.55 per AUM and applied to the new grazing permit period beginning November 1, 2003. In setting the new rate, the Regional Director adopted a recommendation made by the Office of Appraisal Services of the Office of the Special Trustee.

The Tribe filed a timely appeal of the Regional Director's decision. The Tribe subsequently filed a statement of reasons and an opening brief. The Regional Director filed an answer brief. The Tribe did not file a reply brief.

Discussion

The Tribe makes three general challenges to the 2004 grazing rental rate: (1) the grazing rate is not supported by substantial evidence and is arbitrary and capricious; (2) the rate is not in the best interests of the allottees and thus violates the trust obligations of the United States; and (3) the Regional Director violated 25 C.F.R. § 166.408 by failing to properly consult with the Tribe in determining the rate and by providing untimely notice of the changed rate.

It is not necessary for the Board to reach the merits of the Tribe's claims because the Board concludes that the Tribe does not have standing to bring this appeal and, even if it did have standing, the appeal has become moot.

^{1/} Animal Unit Month (AUM) means "the amount of forage required to sustain one cow or one cow with one calf for one month." 25 C.F.R. § 166.4.

^{2/} The Regional Director described the rate as the "minimum grazing rental rate." Prior regulations required BIA to establish "a reservation minimum acceptable grazing rental rate." 25 C.F.R. § 166.13(b) (2000). Those regulations, however, were no longer in effect at the time of the Regional Director's decision. The pertinent regulations provide for the setting of "the grazing rental rate." 25 C.F.R. § 166.400(b) (2003).

Although the Board is not bound by the case or controversy requirement of Article III of the U.S. Constitution, as a matter of prudence, the Board generally limits its jurisdiction to cases in which the appellant can show standing and where claims have not become moot. See Citizens for Safety and Environment v. Acting Northwest Regional Director, 40 IBIA 87, 92 (2004) (standing); Pueblo of Tesuque v. Acting Southwest Regional Director, 40 IBIA 273, 274 (2005) (mootness).

The Board relies on the analysis provided in Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992), to evaluate standing. The burden is on the appellant to show: (1) an injury to a legally protected interest that is concrete and particularized, as well as actual or imminent and not conjectural or hypothetical; (2) that the injury is causally connected with or fairly traceable to the actions of the appellee and not caused by the independent action of a third party; and (3) that it is likely, as opposed to speculative, that the injury will be redressed by a favorable decision. See Lujan, 504 U.S. at 560-61, cited in Citizens for Safety and Environment, 40 IBIA at 93. As to mootness, it may occur when nothing turns on the outcome of an appeal, such that the appeal no longer presents a case or controversy. See Pueblo of Tesuque, 40 IBIA at 274.

The Tribe alleges two types of injuries that will result from the increase in the grazing rental rate. First, the Tribe alleges that the increase will harm individual allotment owners who are members of the Tribe because the large difference between the tribal land rate of \$5.00 and the allotment rate of \$13.55 will cause lessors to elect not to obtain permits for allotted lands. Second, the Tribe alleges that the increase will harm the Tribe because, if the allotted lands are not permitted, they will fall into disrepair and disuse and deprive the reservation economy from the income they generate, and the allottees will be more dependent on the Tribe for economic assistance.

The Tribe does not have standing to sue based on these claims of injury to the Tribe. The Tribe does not have a legally protected interest in ensuring that grazing rental rates set by BIA for allotted lands do not injure the Tribe's economy. BIA has no legal duty to ensure that the grazing rental rate does not negatively affect the Tribe's economy. Federal regulations require BIA to set the rate at the "fair annual rental," which is defined as "the amount of rental income that a permitted parcel of Indian land would most probably command in an open and competitive market." See 25 C.F.R. §§ 166.400(b) & 166.4. BIA's legal responsibility in setting a grazing rate is to the owner of the trust land to which the rate applies. See Fort Berthold Land and Livestock Ass'n v. Great Plains Regional Director, 35 IBIA 266, 277 (2000). Because the BIA grazing rental rate at issue in this appeal applies only to allotted lands, BIA's responsibility is to the allottees, not to the Tribe.

Moreover, even if the Tribe could establish that it had a legally protected interest in ensuring that the grazing rental rate did not harm its economy or result in more burdens on its

assistance programs, it still could not establish an injury sufficient to meet the requirements of standing. To establish standing, the Tribe must allege an injury that is “actual or imminent,” not “conjectural” or “hypothetical.” Lujan, 504 U.S. at 560. The Tribe’s allegations here, that the BIA grazing rental rate will cause individual allotments and allotment owners long-term economic hardship that will harm the tribal economy and increase burdens on tribal programs, alleges a highly conjectural and hypothetical injury that does not meet the requirements of standing.

The Tribe also cannot establish standing to sue on behalf of the allotment owners. Under prudential (as opposed to constitutional) rules of standing, a party “generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of others.” Warth v. Seldin, 422 U.S. 490, 499 (1975); see also United States v. Santee Sioux Tribe, 254 F.3d 728, 734 (8th Cir. 2001). Third party standing may be granted in exceptional circumstances where the party asserting the right has a close relationship with the person who possesses the right and where there is a hindrance to the third party’s ability to protect his own interests. See Kowalski v. Tesmer, 543 U.S. 125, ___, 125 S. Ct. 564, 567 (2004), citing Powers v. Ohio, 499 U.S. 400, 411 (1991). Here, there is no hindrance to the individual allotment owners’ ability to appeal the BIA’s determination of the grazing rental rate to the Board. Thus, the Tribe lacks third-party standing.

Another theory under which the Tribe could attempt to assert standing is parens patriae standing. A sovereign entity may sue as parens patriae for its citizens when the sovereign alleges injury to a sufficiently substantial segment of its population, articulates an interest apart from the interests of particular private parties, and expresses a quasi-sovereign interest. ^{3/} See Alfred L. Snapp & Son, Inc. v. Puerto Rico, 458 U.S. 592, 607 (1982). While the theory of parens patriae standing has developed primarily based on suits by states on behalf of their citizens, courts have recognized that the theory also may apply to tribes suing on behalf of their members. See, e.g., Table Bluff Reservation (Wiyot Tribe) v. Philip Morris, Inc., 256 F.3d 879, 885 (9th Cir. 2001).

It does not appear, however, that courts have addressed parens patriae standing of tribes in actions against the federal government. A state does not have standing as parens patriae to bring an action against the federal government because a state’s citizens are also citizens of the United States, which represents those citizens parens patriae with respect to federal governmental rights. Id. at 486. See Alfred L. Snapp, 458 U.S. at 610 n.16, citing Massachusetts v. Mellon, 262 U.S. 447, 485-486 (1923); see also City of Olmsted Falls v. Federal Aviation Admin., 292 F.3d 261, 268 (D.C. Cir. 2002); State ex rel. Sullivan v. Lujan, 969 F.2d 877, 883 (10th Cir. 1992).

^{3/} Because the Board concludes that parens patriae standing does not apply here for other reasons, the Board does not reach the question of whether the Tribe could meet these requirements of parens patriae standing.

We need not decide whether the Tribe could have parens patriae standing in an administrative appeal against BIA, however, because in this case the Tribe cannot meet the requisite requirements because it does not allege injury to a sufficiently substantial segment of its population. Some courts have held that the doctrine of parens patriae only allows a sovereign to bring actions that are asserted on behalf of all of the sovereign's citizens. See Santee Sioux Tribe, 254 F.3d at 734, citing Louisiana v. Texas, 176 U.S. 1, 19 (1900). Indeed, courts repeatedly have declined to recognize parens patriae standing of tribes where the tribe does not act on behalf of the collective interests of all of its members. See Santee Sioux Tribe, 254 F.3d at 734; Kickapoo Tribe of Oklahoma v. Lujan, 728 F. Supp. 791, 795 (D.D.C. 1990); Assiniboine & Sioux Tribes v. Montana, 568 F. Supp. 269, 277 (D. Mont. 1983). Even if parens patriae standing may be appropriate where the interests of fewer than all tribal members is at stake, it is not appropriate here, where the Tribe's members include both livestock operators and allotment owners, who may have competing interests on the question of the grazing rental rate. 4/ See 13A Charles Alan Wright, Arthur R. Miller, and Edward H. Cooper, Federal Practice & Procedure, § 3531.11 (2005) (standing for sovereign on behalf of citizens not appropriate where sovereign entity "may be choosing sides between different groups of citizens with conflicting interests").

Finally, even if the Tribe had standing at the time it filed its appeal, its claims would be moot. Mootness is "the doctrine of standing set in a time frame: the requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." Arizonans for Official English v. Arizona, 520 U.S. 43, 68 n.22 (1997) (internal quotations and citations omitted). Here, the injury alleged by the Tribe is that the individual allotments will not be leased and will fall into disuse. The Regional Director, however, provided with her answering brief a declaration by the Superintendent of the Cheyenne River Agency, BIA, signed February 18, 2004, attesting that all available permits for individual Indian allotted lands had been issued for the 2004 grazing season, with one exception. Thus, the injury alleged by the Tribe did not occur, and the relief sought by the Tribe — a grazing rate that would enable the allotments to continue be economically productive — has in effect been granted. Hence, the Tribe's appeal is moot. Cf. Hall-Houston Oil Company v. Western Regional Director, 40 IBIA 33 (2004) (dismissing appeal as moot where Regional Director provided relief sought).

4/ The only communication the Board has received from an allotment owner is a letter from allottee Leroy C. Curley stating his support for the BIA's decision to set the grazing rental rate at \$13.55 per AUM, as well as his belief that many if not most of enrolled tribal members agree with his position.

Conclusion

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board dismisses this appeal. The September 16, 2005 decision of the Regional Director establishing the 2004 grazing rental rate for the Reservation stands.

I concur:

// original signed
Katherine J. Barton
Acting Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge